IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1051 OF 2005
WITH
CRIMINAL APPLICATION NO.7477 OF 2005

Deepak Laxman Kudu. ..Appellant.

V/s.

Staste of Maharashtra & Ors. ..Respondents.

Mr.S.P.Kadam for appellant.

Mr.Y.S.Shinde, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 14, 2005.

P.C. :

1. Heard.

2. Appeal is admitted.

3. In so far as prayer for bail is concerned, as the appeal is already admitted as prima facie case has been made out; coupled with the fact that it is unlikely that the appeal will be heard in near future; in my opinion, applicant deserves to be enlarged on bail for the following reasons.

(A) The applicant has been acquitted in relation to offences punishable under section 3(1)(X) and

Section 3(1)(XII) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on the reasoning that the evidence of the concerned witnesses was not trustworthy. The same witnesses however, have been relied for recording finding of guilt against the appellant in relation to the offence under section 376 of the Indian Penal Code.

(B) Secondly, the evidence on record prima facie indicates that prosecutrix was consenting party to the act of intercourse. Indeed, it has come in evidence that the applicant assured prosecutrix that he will marry her, for which he even purchased gold. The fact remained that there is no evidence that the prosecutrix was forced to have intercourse with the applicant. The learned APP fairly accepts that no such evidence can be discerned from the materials on record.

4. Taking overall view of the matter as the applicant has good case on merit and is likely to succeed if the above stand was to be accepted at the final hearing; coupled with the fact that the applicant was on bail during the pendency of the trial and there is nothing on record to show that the applicant has misused that bail, application is

allowed on the following strict conditions.

(i) The applicant shall furnish bond in the sum of Rs.25,000/- with two local sureties in like amount.

(ii) The applicant shall regularly report to the concerned police station once in a month on first Monday of every English Calender month.

(iii) The applicant shall inform his latest place of residence to the concerned police station, including change of address if any, from time to time.

(iv) The applicant shall not indulge in threatening any of the prosecution witnesses during the pendency of the appeal.

(v) The applicant shall not leave District of Thane and Mumbai during the pendency of the appeal without prior permission of this court.

5. Application is disposed of on the above

terms.